

Supreme Court of Kentucky

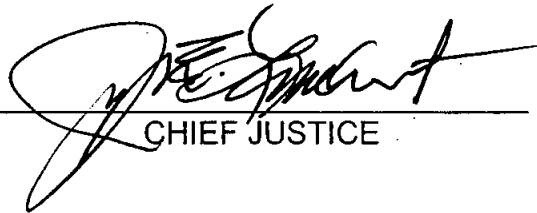
ORDER

IN RE: ORDER APPROVING AMENDMENTS TO THE LOCAL RULES OF PRACTICE FOR THE 50th JUDICIAL CIRCUIT, BOYLE AND MERCER CIRCUIT COURTS

Upon recommendation of the Judge of the 50th Judicial Circuit, Boyle and Mercer Circuit Courts, and being otherwise sufficiently advised,

The amendments to the Local Rules of practice for the Boyle and Mercer Circuit Courts are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this court.

Entered this the 31 day of October, 2007.


CHIEF JUSTICE

LOCAL COURT RULES for PRACTICE AND PROCEDURE

50th JUDICIAL CIRCUIT

**BOYLE CIRCUIT COURT
MERCER CIRCUIT COURT**

**HON. DARREN W. PECKLER
CIRCUIT JUDGE**

DIVISION I (CIVIL/CRIMINAL)

**BOYLE COUNTY COURTHOUSE
Room 238, SECOND FLOOR
321 WEST MAIN STREET
DANVILLE, KENTUCKY 40422
859-239-7009
fax: 859-239-7033**

**MERCER COUNTY COURTHOUSE
SECOND FLOOR
224 SOUTH MAIN STREET
HARRODSBURG, KENTUCKY 40330
859-734-6302
fax: 859-734-9159**

www.courts.ky.gov

**MERCER CIRCUIT CLERK: ROSE BISHOP
BOYLE CIRCUIT CLERK: JONI TERRY**

**MERCER COUNTY MASTER COMMISSIONER:
Hon. Hon. Larry Catlett
BOYLE COUNTY MASTER COMMISSIONER:
Hon. J. Thomas Hensley**

50TH JUDICIAL CIRCUIT

CIRCUIT CLERKS AND MASTER COMMISSIONERS

MERCER CIRCUIT COURT CLERK:

MS. ROSE BISHOP

Mercer Circuit Clerks Office

Mercer County Courthouse

224 Main Street - South

Harrodsburg, Kentucky 40330

phone: 859-734-6306

fax: 859-734-9159

BOYLE CIRCUIT COURT CLERK:

MS. JONI TERRY

Boyle Circuit Clerks Office

Boyle County Courthouse

Second Floor

321 West Main Street

Danville, Kentucky 40422

phone: 859-239-7442

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MERCER COUNTY MASTER COMMISSIONER:

HON. LARRY CATLETT

Attorney at Law

304 North Main Street

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BOYLE COUNTY MASTER COMMISSIONER:

HON. H. THOMAS HENSLEY

Attorney at Law

219 South Fourth Street

Danville, Kentucky 40422

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RULE 1

APPLICABILITY OF LOCAL RULES

These Court Practice and Procedure Rules, 50th Judicial Circuit, and the Kentucky Rules of Civil or Criminal Procedure, and other law, insofar as applicable directly or by analogy, shall govern civil and criminal proceedings in the 50th Judicial Circuit, unless the same conflict with any statute or other law of the United States or the Commonwealth of Kentucky, or rule and/or Order of the Supreme Court, Commonwealth of Kentucky, at any time legally adopted; in which event any such statute, law, rule or Order shall at all times prevail. These Rules shall be cited as "LCRP-50-_____."

RULE 2

PLEADINGS and ORDERS

I. The heading of all pleadings and legal papers in all civil and criminal cases shall be styled at the beginning and center of the first page as follows:

**COMMONWEALTH OF KENTUCKY
50TH JUDICIAL CIRCUIT
BOYLE (or MERCER) CIRCUIT COURT**

The case number may be centered directly under the above, or placed at far right margin between named parties.

II. All pleadings and papers requiring a certificate of service shall set forth on the last page thereof the typed name and complete address of counsel, including telephone number AND complete name, address, and telephone number of all opposing counsel.

Example:

(Signature): _____
Hon. Jane R. Doe
COUNSEL FOR PLAINTIFF
Doe, Smith, and Johnson
408 North Fourth Street
Danville, Kentucky 40422
Telephone: (859) 239-0000

Hon. Jean S. James
COUNSEL FOR DEFENDANT

(DEFENDANT)-(name which defendant)
James, Douglas, and Morris
617 South Fifth Street
Harrodsburg, Kentucky 40330
telephone: (859) 734-0000

III. All pages of all legal papers shall be numbered at the bottom center of each page as follows:

Page _____ of _____ (pages)

IV. If a page requesting Judge's signature has no other indicator of the case name and number on said page, a notation of the court name and case number shall be included at the top of said signature page.

**Example: Boyle Circuit Court
Case number 00-CI-00000**

V. No Orders (original or copy) shall accompany a motion for which a hearing is required by these Rules. All Orders shall be prepared by designated party AFTER hearing on said motion and shall be presented to the Circuit Court Clerk.

VI. Well in advance of any scheduled hearing, a courtesy copy of all pleadings and all memoranda will be given to the Judge with notice of said hearing date, time, and location noted on all pleadings. Any such copies received less than three (3) days prior to any hearing will be deemed as having been untimely received and may be disregarded by the Court.

VII. All attorneys ordered by the Court to prepare an Order shall do so and circulate it to opposing attorneys within five (5) days. Within three (3) days after receiving said Order, the opposing attorney shall: 1) sign the "Have Seen" certificate and present the Order to the Clerk, or 2) notify the drafting attorney of his or her objection(s) and that the drafted Order does not conform to the instructions of the Court. If the attorneys can not promptly agree, the non-drafting attorney shall schedule a hearing before the Court to clarify the Order. The Court may assess attorney's fees if it feels the objection was frivolous, that the drafting attorney has changed the Court Order, or if either attorney has been dilatory.

RULE 3

JURY TERM and CONTACT WITH JURORS

I. Both Boyle and Mercer Circuit Courts will be Courts of continuous session; therefore, a jury will be available in both counties at all times.

II. No jury trial date or non-jury trial date will be assigned prior to pretrial conference in criminal and civil matters.

III. Except as provided in RCr 10.04 and CR 47.01, jurors on any jury panel for the 50th Judicial Circuit shall not be examined while said jurors are called for jury service on any case. After jurors have been discharged from jury service on said case, the juror may be interviewed, examined, or questioned by any attorney or any other persons to the extent allowed by law. Contact with jurors is discouraged. Prior to any contact, each juror to be contacted should be advised of their right not to have to speak with or discuss, in any way, their service as a juror, their impressions, their beliefs, their position on, or their views concerning any aspect of any trial or proceeding in which they were involved.

RULE 4

PROCEDURES IN CRIMINAL CASES

I. Regular criminal hearing days in Boyle County will be the Tuesday of the first full week of each month (unless otherwise Ordered), with arraignments, motions, and probation violation hearings to be heard beginning at 9:00 a.m.; and pretrial conferences to begin at 1:30 p.m. Final sentencings and guilty pleas will be scheduled by the Court on this date.

II. Regular criminal hearing days for Mercer County will be the Tuesday of the second full week of each month (unless otherwise Ordered), with arraignments, motions, and probation violation hearings to be heard beginning at 9:00 a.m.; and pretrial conferences and final sentencings to begin at 1:30 p.m.

III. The Court may schedule other criminal matters requiring a hearing greater than fifteen (15) minutes at any other time available on its calendar.

IV. There will be no arraignment scheduled on the Court's calendar without proper service of a summons or warrant prior to the arraignment.

V. Criminal matters shall have priority on the Court's calendar for trial dates.

VI. A regular grand jury shall be impaneled pursuant to KRS 29A.210 in January of each year in Boyle County; and in January of each year in Mercer County; and at such other times as the Judge may find that the ends of justice or the needs of the county require. A special grand jury may be impaneled by the Judge pursuant to KRS 29A.220 in the manner and for the reasons provided in that section.

VII. If it appears after inquiry and examination that a defendant is not financially able to employ an attorney and is otherwise eligible for the appointment of counsel to represent him, the Court shall appoint the Department of Public Advocacy as defendant's counsel, subject to existing laws and regulations of that agency.

VIII. In the event a defendant shall insist upon representing himself without counsel, the defendant shall be brought before the Court and be examined by the Court concerning his/her understanding of the proceedings and possible consequences to him/her in the proceedings, his/her right to the assistance of counsel, and all other relevant matters. If the Court is convinced that defendant is aware of his/her rights and has waived them knowingly, voluntarily, and intelligently, the Court shall permit him/her to proceed without counsel and shall, by written Order, relieve any counsel previously appointed. The Court may, in its discretion, appoint advisory or "whispering" counsel to aid the defendant if the Court deems such appointment will advance the ends of justice.

IX. If a plea bargain agreement can be entered into between the Commonwealth and defendant, the defendant shall be prepared to enter his/her plea at a status conference, pretrial conference, or hearing for entry of said plea. After the plea is entered, a sentencing hearing will be scheduled. If no plea bargain agreement can be entered into after the pretrial conference, the Commonwealth Attorney shall withdraw his/her offer, and the case will be assigned for an immediate trial date. Thereafter, the Court will not accept any recommendations as to sentence from the Commonwealth on any plea unless the Commonwealth shall, from good cause shown, seek leave of Court to make such a recommendation to the defendant.

X. Class D Felony Pretrial Diversion option may be offered to those defendants who are eligible. Pretrial Diversion is the postponement of imposition of sentence upon any person who qualifies for this program, subject to certain conditions, for a period of time not to exceed five (5) years subject to certain conditions established by the Court. The Protocol for such Pretrial Diversion is attached hereto and made a part hereof as Addendum #1.

RULE 5

PROCEDURES IN REGULAR CIVIL CASES

I. Regular civil motion days in Boyle County will be held during the first full week of each month, on Wednesday and Thursday, from 9:00 a.m. until 12:00 noon on Wednesday and from 11:00 a.m. until 12:00 noon on Thursday (unless otherwise Ordered). Scheduling will be through the Boyle Circuit Court Judge's Office (859-239-7009) or the Boyle Circuit Clerks Office (859-239-7442).

II. Regular civil motion days in Mercer County will be held during the second week of each month, on Wednesday, from 9:00 a.m. until 12:00 noon (unless otherwise Ordered). Scheduling will be through the Mercer Circuit Court Clerk (859-734-6306).

III. Motions for Restraining Orders and Injunctions shall only be heard by the Court. Same may be scheduled through the Boyle Circuit Court Judge's Office (859-239-7009) for Boyle County cases and through the Mercer Circuit Court Clerk's Office (859-734-6306) for Mercer County cases.

IV. To set any proper matter for hearing on the regular Civil Motion Day, the movant shall contact the Judge's Office or the Clerk in the County where the hearing is to be held. A time for hearing will be assigned, either at 9:00, 10:00, or 11:00 a.m. This time shall be included in the notice of the hearing filed by the movant. The original copy of said motion shall be filed in the respective Clerk's office by the close of business on the fifth working day after obtaining the scheduled date for the motion. If the motion is not in the Clerk's office in time, the Clerk shall remove the motion from the docket. A copy of any pleading which includes memorandum or brief shall be served on the Court, as well as the parties. Motions shall be served on the Master Commissioner where applicable. Orders shall be delivered to the Circuit Court Clerk when appropriate, NOT prior to any ruling.

V. No Motions will be "piggy-backed" on to another motion previously set by an opposing attorney in an action without the consent of counsel who first filed said motion. A motion is "piggy-backed" if the movant notices a motion for hearing on a date and time without first obtaining from the Clerk of the Court approval for said hearing on the said date and time. Motions for continuances are NOT considered as being "piggy-backed."

VI. If the hearing time exceeds the estimated amount of time scheduled by the movant(s), the Court, in its discretion, may continue that hearing until later that day, or reschedule to another date, if necessary.

VII. Default Judgements may be presented to the Court for signature after proper service upon all parties and the appropriate time lapse, without scheduling same for hearing.

VIII. Summary Judgements will be scheduled before the Court on proper motion and notice.

IX. Substitution of counsel or withdrawal of counsel from any proceeding may be by: 1) an Agreed Order which names the "new" counsel and is signed by all parties; or, 2) leave of Court upon proper motion with notice to all parties.

X. Notice of all motions (civil or domestic) before the Judge must be served on all necessary parties at least ten (10) working days before the scheduled hearing.

RULE 6

COURT RECORDING/ DESIGNATIONS OF RECORD

I. The record of the 50th Judicial Circuit, Boyle and Mercer Circuit Courts, shall be a video record in accordance with the Rules of the Kentucky Supreme Court, specifically - "In Re: Order Establishing Procedures For Using Videotape Equipment To Record Court Proceedings," Entered October 28, 1986, by (then) Chief Justice Robert F. Stephens.

II. All Notices of Appeal and Designations of Record shall be served on the Clerk and a copy of each on the Court Reporter (if necessary), the attorney filing said notice and/or designation shall be responsible for the cost of transcription, or any part thereof, prepared as a result of said notice of appeal and/or designation of record.

RULE 7

MASTER COMMISSIONER SALES

I. Proposed Judgements for Orders of Sale shall be prepared by the party requesting same and in accordance with the provisions of applicable law and this Local Rule.

II. Judgements for Orders of Sale to be conducted by the Master Commissioner shall be submitted to the Master Commissioner for his recommendation to enter same by his signature affixed thereto, not less than five (5) days prior to any hearing before the Court.

III. Notwithstanding the provisions of all other applicable law, Judgements for Orders of Sale shall contain the following:

- A. Requirements for sale in accordance with KRS Chapters 424 and 426, et. seq.
- B. Styled with the names of all parties.
- C. A specific designation of all costs, liens, taxes or encumbrances to be paid.
- D. That the date and time of sale shall be determined by the Master Commissioner.
- E. That should the plaintiff be the successful purchaser at sale, the bond may be waived with a deposit in the sum of Two Thousand, Five Hundred Dollars (\$2,500) to the Master Commissioner for costs and fees.

IV. Withdrawal or abatement of any judicial sale after entry of a Judgement and Order thereon shall be made by motion and Order prior to the date and time of the sale.

V. Reinstatement of a judicial sale following an order to withdraw or abate same shall be made by motion and Order.

VI. Master Commissioners of the 50th Judicial Circuit shall maintain their office and records of sale at the location where they regularly practice law and during their regular office hours. See: KRS 31A.010(5)

VII. Annual Report of the Master Commissioners.

- A. Pursuant to KRS 31A.010(2) & (6), all Master Commissioners or Special Master Commissioners of this Circuit shall at the end of each year, in which they have conducted, concluded, or disposed of funds as the result of a Court-Ordered sale, report to the Court any unexpended funds remaining in their possession after December 31 of each year.**
- B. Said "Annual Report of the Master Commissioner" shall be filed with this Court on or before the 15th day of March of each year. Any unexpended funds which have not been distributed by the Master Commissioner shall be paid over, transferred, and delivered to the Circuit Clerk of the respective counties on or before May 1 of each year. Said funds shall be subject to the laws of escheatment.**
- C. The Master Commissioner shall prepare an Order reflecting said payment to the Clerk; said Order shall be served upon the parties pursuant to the provisions of CR 77.04.**
- D. The Clerk of this Court is Ordered to hold said funds in accordance with the guidelines of the Administrative Office of the Courts in such a manner and for such time as is appropriate under the applicable laws of this Commonwealth.**

RULE 8
STATUS REPORTS

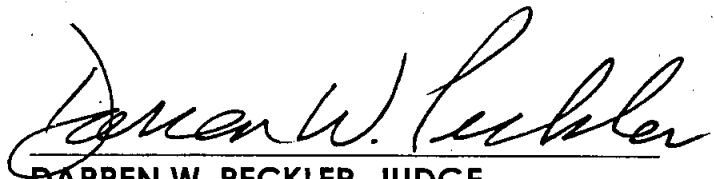
The Court may issue a status report order in any action in the Circuit requiring counsel to inform the Court of the time counsel reasonably believes will be necessary to file pretrial motions and complete all pretrial discovery, the probable length of trial, whether or not a jury is required, and dates mutually convenient with all counsel if the Court is to assign the case for trial. The Court may also require counsel to inform the Court concerning settlement efforts and mediation.

RULE 9

EFFECTIVE DATE

These Rules are adopted pursuant to the authority granted by Rule 78 of the Kentucky Rules of Civil Procedure and SCR 1.040(3), and these Rules, as amended, and any revision and/or addition or deletion to these Rules shall become effective and apply with full force and effect to all actions filed or pending as of the date of their approval by the Supreme Court.

DONE THIS THE 26th DAY OF OCTOBER, 2007.

A handwritten signature in black ink, reading "Darren W. Peckler", written over a horizontal line.

DARREN W. PECKLER, JUDGE
50TH JUDICIAL CIRCUIT
MERCER CIRCUIT COURT
BOYLE CIRCUIT COURT

**COMMONWEALTH OF KENTUCKY
50TH JUDICIAL CIRCUIT
MERCER CIRCUIT COURT
BOYLE CIRCUIT COURT**

CLASS D FELONY PRETRIAL DIVERSION PROTOCOL

I. Definition

Pretrial diversion is the postponement of imposition of sentence upon any person who qualifies for this program, subject to certain conditions, for a period of time not to exceed five (5) years subject to certain conditions established by the Court.

II. Persons Eligible

- A. Any person charged with a Class D felony, who has not had a felony conviction in the ten (10) years prior to commission of the current offense, or who has not been on felony probation or parole or released from felony incarceration within the ten (10) years prior to commission of the current offense, shall be eligible for pretrial diversion.
- B. The person charged must enter a plea of guilty, or a plea pursuant to North Carolina v. Alford, before becoming eligible for pretrial diversion.
- C. Persons ineligible for probation, parole or conditional discharge under KRS 532.045 shall be ineligible for this program.
- D. A person convicted of a Class D felony for which early release is disallowed by statute, including KRS 189A.010(8) and KRS 189A.120(2), shall be ineligible for this program.
- E. No person shall be eligible for this program more than once in any five (5) year period.

III. Procedure

- A. After indictment in circuit court, and no later than thirty (30) days before trial, any person eligible for the program may apply to the Circuit Court and the Commonwealth for entry of a pretrial diversion order.
- B. In applying for pretrial diversion, counsel for the defendant must state, and the defendant must agree on the record, in the event diversion is granted, any right to a speedy trial or disposition of the charge against him/her is waived.
- C. The Commonwealth shall make a written recommendation to the Court in response to each application. KRS 533.250(2).

D. Before making a recommendation to the Court, the Commonwealth shall:

1. Have a criminal record check made by telephoning Pretrial Services at AOC at 1-800-928-2350, or faxing the request to (502) 573-1669. **[DO NOT send requests to the local Pretrial Services Officer.]**
2. Make a good faith effort to interview and seek input from the victim and/or victim's family and advise them of the time, date and place the motion will be heard by the Court; and
3. When diversion is recommended, the Commonwealth must make written recommendations to the Court of conditions for the pretrial diversion as well as the appropriate sentence to be imposed if the diversion agreement is unsuccessful. KRS 533.252(3).

NOTE: [The Commonwealth will be bound by its recommendation. In the event diversion is unsuccessful, the Commonwealth will not be permitted to argue for a sentence in excess of the original recommendation. Moreover, the Court cannot impose a sentence greater than the recommendation without first allowing the defendant the opportunity to withdraw the plea.]

IV. Order of Pretrial Diversion

A. The Court may, in its discretion, order a pre-sentence investigation by the Department of Corrections prior to the granting of an order for pretrial diversion for eligible petitioners upon terms and conditions it deems appropriate. AOC Form 346, styled Order Granting Pretrial Diversion of a Class D Felony may be utilized by the Court.

B. The Order of Diversion **shall** include:

1. Restitution, if applicable. **[Made mandatory by KRS 533.254 where victim has suffered monetary damage].**
2. Whether the diversion shall be supervised or unsupervised (and include supervision fees, if applicable).
3. Duration of the diversion.
4. Require defendant to obey all rules and regulations imposed by Probation and Parole.
5. As required by KRS 533.030(1) [conditions of probation-restitution], direct the defendant not to commit any offense during the period of the pretrial diversion. Specifically, direct the defendant to comply with any other provision of KRS 533.030 or any other condition the Court deems appropriate.
6. That the petitioner remain drug and alcohol free and be subject to random testing.
7. That the petitioner have no violation of the Penal Code or the Controlled Substances Act.

8. That the petitioner possess no firearm or any other deadly weapon.
 9. Such other terms and conditions as the Court shall deem appropriate, including, but not limited to, public service work and touring of a facility.
- C.
1. Duration of the pretrial diversion shall not exceed five (5) years without agreement of the petitioner. Duration of the diversion agreement shall not be less than the time required to make restitution in full.
 2. The defendant shall remain on bail pending successful completion of the pretrial diversion agreement.

V. Voiding a Diversion Order

- A. After a hearing, with notice to the Commonwealth and the defendant, the Court may void a person's participation in pretrial diversion upon a showing of failure to comply with the conditions of diversion or failure to make satisfactory progress. [AOC Form 347, styled Order Voiding Pretrial Diversion of a Class D Felony, is available for this purpose.]
- B. If an order of pretrial diversion is voided, the defendant shall be sentenced according to law, based on his or her prior plea of guilt/plea pursuant to North Carolina v. Alford. **[NOTE: When revocation is ordered, a full updated PSI will be ordered and a sentencing hearing must be scheduled].**
- C. 1. Under KRS 533.256 (2), the same criteria applicable to a probation revocation hearing applies to a proceeding to void an order granting diversion. Pursuant to KRE 1101(d)(5), the Rules of Evidence are inapplicable in miscellaneous proceedings such as those revoking probation. A proceeding to determine whether an order granting diversion should be voided also constitutes a miscellaneous proceeding and therefore the Rules of Evidence are inapplicable to such hearings.
2. Upon affidavit or other sworn statement from a Probation and Parole Officer or the Commonwealth, the Court may, in its discretion, issue a bench warrant for the arrest and detention of the defendant pending the hearing contemplated in §V(A) above.

VI. Completion of Diversion Program

If the defendant successfully completes the provisions of the pretrial diversion agreement, the charges against the defendant shall be dismissed. **NOTE: The successful completion of a diversion contract does not result in automatic expungement of a criminal charge under KRS 431.076].**